IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.795 OF 2007
IN
REVIEW PETITION (STAMP) NO.4240 OF 2007
IN
WRIT PETITION NO.6471 OF 2006
WITH
REVIEW PETITION (STAMP) NO.4240 OF 2007
IN
WRIT PETITION NO.6471 OF 2006

Shri Narayan V. Mathkar & Anr. .... Applicants
Vs.
The Jan Kalyan Sahkari Bank Ltd.
& Ors. .... Respondents

Ms Darpana Nagarkari i/b Shri Bhavesh Parmar
for the Applicants.

Shri Sandip Bhagwat i/b M/s. V. Deshpande for
the Respondent No.1.

Shri R.M. More, AGP, for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: APRIL 10, 2007

P.C:

1. Heard. This is an application for condonation of delay of 100 days in filing the review petition. Only ground disclosed for the condonation of delay is that the applicants/petitioners were busy arranging the amount due and payable under the recovery certificate. No details regarding the time spent in arranging such amount has been given in the application or in the affidavit in support of the application. Merely because the applicants were busy arranging the amount payable

under the recovery certificate, that by itself cannot be said to be sufficient cause for the condonation of delay of 100 days in filing the review petition.

2. Even otherwise, on merits there is absolutely no substance in the review petition. It is the contention on behalf of the applicants that the order dated 17-10-2006 in Writ Petition No.6471 of 2006 was passed primarily because the Advocate for the petitioners could not reveal any agreement between the parties for deduction of monthly instalments from their savings account, when in fact such an understanding was there between the Bank and the petitioners. It is the contention on behalf of the applicants that the said understanding was an oral understanding. Undisputedly, there is no plea about such an oral understanding in the said Writ Petition. Being so, in the absence of such a plea, by no stretch of imagination it can be said to be an error apparent on the face of the record in the order dated 17-10-2006 which could warrant review of the said order. Even otherwise, and even assuming that such a plea was raised in the said Writ Petition, once the order dated 17-10-2006 does not disclose such a plea having been canvassed at the time of the hearing of the matter, the same cannot be an error apparent on the face of the record. Assuming that it was raised in the course of the hearing of the matter, even then, merely because there was some understanding alleged between the

parties, in the absence of such a plea being raised in the original proceedings under Section 91 of the Maharashtra Co-operative Societies Act, 1960 and there was adjudication on that point, such a point cannot be considered in the execution proceedings. The proceedings which originated subsequent to issuance of the certificate under Section 101 of the said Act are in the nature of execution proceedings. Being so, in the Writ Petition, arising out the order passed in such execution proceedings, the Court cannot be go beyond the decree. Hence, even on merits there is no case for review of the said order.

3. For the reasons stated above, therefore, there is no case made out for the condonation of delay. The application is, therefore, rejected. In view of rejection of the application for condonation of delay, the Review Petition (Stamp) No.4240 of 2007 stands disposed of.

(R.M.S. Khandeparkar, J.)

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